REMARKS/ARGUMENTS

Claims 12-18 are active in this application.

The claims are directed to compositions for assaying target nucleic acids and as such are the elected subject matter. .

Support for claim 12 can be found at least in Example 1 and Fig. 9 of the original specification, and support for the fluorescent dyes can be found in Table 2 and paragraph [0040] of the original specification.

Support for new claim 13 can be found in Example 1 of the original specification.

Support for claim 14 can be found at least in Examples 3, 4 and 8 of the original specification.

Support for claim 15 can be found in Table 2 and paragraph [0040] of the original specification.

Support for claim 16 can be found in Fig. 13 of this application.

Support for claim 17 can be found in Table 2 and paragraph [0040] of the original specification.

Support for claim 18 can be found in paragraph [0041] of the original specification.

No new matter is added.

The objections noted on pages 2-3 and the rejection under 112, second paragraph on page 5 of the Action are no longer applicable as those claims have been cancelled.

Applicants thank Examiner Woolwine for the courtesy of discussing this case with their undersigned representative on January 9, 2009. During this meeting, amended claims like those presented in this paper were discussed as well as the inapplicability of the cited art. Further details of this meeting are reflected in the remarks below.

The internal standard nucleic acid (B) in the claims contains a portion which has the same base composition as that the corresponding portion of the target nucleic acid. Therefore, the number of base-pairs to be formed between the target nucleic acid probe and the target nucleic acid and the GC contents of the probe (i.e. the GC contents of the nucleic acid) will be equal to that between the target nucleic acid probe and the internal standard nucleic acid and the GC content of the nucleic acid or the internal standard nucleic acid.

As a result, there will be no substantial difference in heat stability between the hybridized complex to be formed by the target nucleic acid probe and the target nucleic acid and that to be formed by the internal standard nucleic acid probe and the target nucleic acid. Therefore, the probes are both considered to hybridize likewise with the target nucleic acid and the internal standard nucleic acid without distinguishing from each other. (see also paragraph [0078] in the specification).

With respect to the rejections citing Nazarenko's publication, what is described there is not the same as what is defined in Claims 12-18.

In Example 27, Nazarenko. teaches a mixture comprising both a nucleic acid probe and an internal standard nucleic acid (as outlined in the Action at page 7). The nucleic acid probe is, however, labeled with only a fluorescein.

In claim 12, the nucleic acid probe is not labeled with a fluorescein, but is labeled with a fluorescent dye that is quenched by guanine and selected from Pacific Blue, TET, TBSF, HEX, rhodamine 6G, BODIPY FL and TAMRA.

In claim 14, the nucleic acid probe is labeled with two fluorescent dyes, which is not described or suggested by Nazarenko.

In claim 15, the nucleic acid probe is labeled with a fluorescent dye and a quencher, which is not described or suggested by Nazarenko.

Reconsideration and withdrawal of the rejections citing Nazarenko is requested.

A Notice of Allowance is requested.

Respectfully submitted,

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